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10/664,259	09/17/2003	Thomas L. Byers	OKC00085	3398

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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/664,259

Applicant(s)

BYERS, THOMAS L.

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-13, 15-23 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-13, 15-23 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Interview Request***

Examiner contacted Randall K. McCarthy on 17 February 2005 per the interview request filed 07 December 2004. Examiner suggested that Mr. McCarthy contact the examiner upon receipt of the following office action to conduct the interview at that time. Applicant's representative agreed to contact the examiner at that time.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 6, 9, 13, 15, 16, 18, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,551,371 to Markey et al.

Regarding Claims 1 and 18, Markey et al teaches a modular animal enclosure with a housing comprising a base portion (#12) and a top portion (#14) attached to the base portion to form a sheltered interior, the housing including a door aperture (#42) to permit ingress of an animal into the interior and a climate conditioning aperture (#84) to accommodate a flow of atmospheric air between the interior and an external environment (Col. 3 line 8-10); and a climate conditioning unit (Fig. 7) configured for removable attachment to the housing adjacent the climate conditioning aperture, the climate conditioning unit contactingly supported by the housing (#64) at a position a selected distance away from the climate conditioning aperture (#152 is below the

Art Unit: 3643

aperture) so as to form a gap there between, the climate conditioning unit capable of facilitating the flow of atmospheric air through the gap and through the climate conditioning aperture to the interior (Col. 5 line 4-5 and Fig. 6 #90 and #100 inherently air will enter the interior through these apertures when the cover is an open position).

Regarding Claim 2, Markey teaches the climate conditioning unit comprises a cover assembly (#136) comprising a plate member having a cross-sectional area greater than the cross-section area of the climate conditioning aperture, wherein the plate member is supported by the housing at least at one location adjacent to, and outside of, the climate conditioning aperture (Fig. 7 #136 is adjacent to and outside of the aperture).

Regarding Claim 5, Markey teaches the climate conditioning unit comprises a cooled air unit which is capable of supplying cooled air to the unit (#150 and #90).

Regarding Claim 6, Markey teaches the climate conditioning unit comprises a fan (Fig. 7 #150) unit, which directs increase velocity ambient air through the climate conditioning aperture.

Regarding Claim 9, Markey teaches the climate conditioning unit extends through the climate conditioning aperture and into the housing interior (Fig. 7 #150 is below #82).

Regarding Claim 13, Markey teaches the top portion (#14) is sized to nest within the base portion (#12) when the top is inverted.

Regarding Claim 15, Markey teaches the climate conditioning aperture is centered in the top portion over the sheltered interior of the housing (Fig. 2 #64).

Regarding Claims 16 and 21, Markey teaches a sensor which detects an ambient condition, and wherein the climate conditioning unit operates in response to the detected ambient condition (Col. 5 line 7).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,551,371 to Markey et al in view of U.S. Patent No. 2,689,906 to Corbett.

Regarding Claim 3, Markey is silent on the at least one post projects from the plate member and into a corresponding post aperture in the housing at said at least one location. However, Corbett teaches a ceiling ventilator with at least one post (Corbett #75) projects from the plate member and into a corresponding post aperture (Corbett Fig. 1 #11) in the housing. It would have been obvious to one of ordinary skill in the art to modify the teachings of Markey with the teachings of Corbett at the time of the invention since the modification is merely an alternate equivalent attachment means selected as an engineering manufacturing design choice for ergonomic ease of assembly and for more structural stability in high winds.

Regarding Claim 4, Markey as modified teaches an insertion depth of the post (Corbett #75) into the respective post aperture can be slightly adjusted to alter a cross-

Art Unit: 3643

sectional thickness of the gap between the cover (Markey #136) assembly and the top cover (#82).

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,551,371 to Markey et al in view of U.S. Patent No. 3,160,139 to Wales, Jr.

Regarding Claims 7 and 8, Markey teaches the importance of providing a heat source to the housing in cold weather, but is silent on the climate conditioning unit comprises a heating unit which supplies heated air to the interior and the climate conditioning unit comprises radiant heat source which directs radiant heat into the interior. However, Wales teaches a modular animal enclosure with a radiant heat source (Wales Fig. 1 #23). It would have been obvious to one of ordinary skill in the art to modify the teachings of Markey with the teachings of Wales at the time of the invention to provide comfortable and healthy environmental conditions in colder climates.

Claims 11, 12, 17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,551,371 to Markey et al.

Regarding Claims 11 and 12, Markey teaches a substantially circular aperture, but is silent on the climate conditioning aperture is substantially rectangular in cross-sectional extent with a dimension of at least four inches. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Markey at the time of

Art Unit: 3643

the invention since the modification is merely a change in shape/size to accommodate different size fans or to facilitate ease of assembly of the fan into the aperture.

Claims 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,551,371 to Markey et al in view of U.S. Patent No. 5,868,101 to Marshall.

Regarding Claims 17 and 20, Markey teaches a temperature sensor, but is silent on a sensor which detects the presence of the animal within the interior and wherein the climate conditioning unit operates in response to the detected presence of the animal. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Markey at the time of the invention since sensor devices are old and notoriously well-known in any automated system (i.e. lights are on sensors when people enter rooms for energy conservation in office buildings etc). It would have been obvious for one of ordinary skill in the art to be motivated to make this modification for the advantage of energy conservation practice. Marshall teaches an animal detecting sensor in a housing assembly (Marshall claim 15) utilizing a photoelectric sensor. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Markey with the teachings of Marshall as means of energy conservation measure.

Claims 19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,551,371 to Markey et al in view of U.S. Patent No. 3,710,761 to Gregory and U.S. Patent No. 2,010,045 to Waugh.

Regarding Claims 19 and 25, Markey teaches the importance of providing convenience to the pet owner and easy access to the interior and this has a design of a top portion and a base portion that hinges on one side, but is silent on means for allowing pivotal movement of the top portion with respect to the base portion in alternate, opposing first and second directions. However, Gregory teaches an animal enclosure that has pivotal hinging on opposite sides of the enclosure (Gregory abstract last line and Col. 1 line 50-55). It would have been obvious to one of ordinary skill in the art to modify the teachings of Markey with the teachings of Gregory at the time of the invention since the modification is merely the selection of a known alternate hinge configuration performing the same intended function of providing pivotal access to the interior of the shelter, selected for its ergonomic advantage of accessing the interior from either side without having to rotate the shelter which provides convenience in certain space constraint situations and depending on the positioning the animal that might be resting inside.

Markey as modified by Gregory teaches a C-shaped clamp hinge on opposite sides of the base and top, but is silent on at least one hinge pin which projects through respective first hinge apertures in the base portion and in the top portion of a first side of the housing and a second hinge apertures on a second side of the housing opposite the first side so that the hinge pin can be alternately inserted through the second apertures.



However, Waugh teaches a enclosure assembly with first and second hinge apertures on opposite sides and a hinge pin for pivotal movement (Waugh #42 and 48). Waugh teaches that this alternate hinge embodiment is old and notoriously well-known. It would have been obvious to one of ordinary skill in the art to further modify the teachings of Markey with the teachings of Waugh at the time of the invention since the modification is merely the selection of a known alternate equivalent pivotal hinge configuration selected for ease of assembly taught by Waugh (Waugh Col. 1 line 37).

Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,710,761 to Gregory in view of U.S. Patent No. 2,010,045 to Waugh et al.

Regarding Claim 22, Gregory teaches a modular animal enclosure comprising a base portion and a top portion attached to the base portion to form a housing with a sheltered interior, wherein the top portion is configured to be hinged to the base portion to facilitate access to the interior by pivotal movement of the top portion in a first direction and pivotal movement of the top portion with respect to the base portion in a second direction (Gregory abstract last line and Col. 1 line 50-55) and when the device of Gregory is open as depicted in Fig. 2 the opening to the base is inherently the door.

Gregory teaches a C-shaped clamp hinge on opposite sides of the base and top, but is silent on at least one hinge pin which projects through respective first hinge apertures in the base portion and in the top portion of a first side of the housing and a second hinge apertures on a second side of the housing opposite the first side so that

the hinge pin can be alternately inserted through the second apertures. However, Waugh teaches a enclosure assembly with first and second hinge apertures on opposite sides and a hinge pin for pivotal movement (Waugh #42 and 48). Waugh teaches that this alternate hinge embodiment is old and notoriously well-known. It would have been obvious to one of ordinary skill in the art to modify the teachings of Gregory with the teachings of Waugh at the time of the invention since the modification is merely the selection of a known alternate equivalent pivotal hinge configuration selected for ease of assembly taught by Waugh (Waugh Col. 1 line 37).

Regarding Claim 23, Gregory as modified teaches the top portion is sized to nest within the base portion when the top portion is inverted (Gregory Abstract second sentence).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-9,11-13,15-23 and 25 have been considered but are moot in view of the new ground(s) of rejection.

The rejection in the previous office action in view of U.S. Patent No. 6,490,995 to Greene should have been a rejection under 102(e) instead of 102(b). However, the pre-grant publication document US2002/0023594 filed 28 February 2002 would have been a valid 102(b) reference. The examiner has withdrawn this rejection not based on applicant's arguments of reference date, but based on the argument that the teachings of Greene are not "contactingly supported by the housing."

Page 11 of the specification defines the limits of the "means for language". In this instance the means for facilitating flow of atmospheric air" is a fan unit, the means

Art Unit: 3643

for allowing pivotal movement” is at least one hinge pin and first hinge apertures and second hinge apertures on the opposing side of the base.

Although previously cited prior art U.S. Patent No. 4,443,387 to Gordon was not used in the rejections presented in the above paragraphs, the examiner would like to draw the structure of this device to applicant's attention. Gordon teaches application of the device for cooling large masses of air for commercial applications, but has a similar structure to that of applicant's device.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.: U.S. Patent No. 1,032,012; U.S. Patent No. 2,359,716; U.S. Patent No. 411,739.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

17 February 2005